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THE AMENDED INSECTICIDE LAW

BY

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Dealers and Users of Insecticides have requested a statement of the effect of the amendments to the Insecticide Law passed by the last legislature. The original act was the result of the efforts of a committee composed of users and manufacturers acting under the authority of the State Fruit Growers Convention. The amendments have been added through the activity of dealers, *i.e.* druggists and grocers. While apparently removing some of the safeguards, the present law may still sufficiently protect the user. It will be the special task of the Insecticide Laboratory during the next two years to determine whether the users' interests are sufficiently protected and if not the law can be further amended.

Below will be found the full text of the law as it now stands with footnotes commenting on each of the changes.

THE INSECTICIDE LAW

CALIFORNIA STATUTES OF 1911

CHAPTER 653

An Act to regulate the manufacture, sale, adulteration and misbranding of insecticides or fungicides or materials used for insecticidal or fungicidal purposes, and to provide penalties for the infraction thereof, and to appropriate money therefor. (Approved May 1, 1911.)

CALIFORNIA STATUTES OF 1913

CHAPTER 211

An act to amend an act entitled "An act to regulate the manufacture, sale, adulteration and misbranding of insecticides or fungicides or materials used for insecticidal or fungicidal purposes, and to provide penalties for the infraction thereof, approved May 1, 1911," by adding a new section thereto, to be known as section fourteen a.

CHAPTER 612

An act to amend that certain act entitled "An act to regulate the manufacture, sale, adulteration and misbranding of insecticides or fungicides or materials used for insecticidal or fungicidal purposes, and to provide penalties for the infraction thereof, and to appropriate money therefor," approved May 1, 1911, by amending sections 8, 9, 11, 13, 14 and 18 thereof, and by repealing section 12 thereof and by adding two new sections to said act, which sections shall be numbered 12 and 12½, relating to the manufacture, sale, adulteration and misbranding of insecticides or fungicides or materials used for insecticidal or fungicidal purposes, and providing for the branding of insecticides or fungicides or materials used for insecticidal or fungicidal purposes in certain cases.

The People of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. That it shall be unlawful for any person to manufacture within this state any insecticide, Paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and shall upon conviction thereof, be fined not to exceed two hundred dollars for the first offense, and upon conviction for each subsequent offense be fined not to exceed three hundred dollars, or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment, in the discretion of the court. Such fines and those specified in section 2 of this act to be paid into the school fund of the county in which conviction is had.

SEC. 2. Any person who shall offer to deliver to any other person or any person who shall sell or offer for sale in this state any such adulterated or misbranded insecticide or Paris green or lead arsenate or fungicide which is adulterated or misbranded within the meaning of this act, or export or offer to export the same to any foreign country shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars, or to be imprisoned not exceeding one year, or both, in the discretion of the court; provided, that no article shall be deemed misbranded or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the provisions of this act.

SEC. 3. The examination of specimens of insecticides, Paris greens, lead arsenates and fungicides shall be made by the director of the agricultural experiment station of the University of California in person or by deputy, for the purpose of determining from such examination whether such articles are adulterated or misbranded within the meaning of this act; and if it shall appear from any such examination that any of such specimens are adulterated or misbranded within the meaning of this act, the said director shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard under the rules and regulations adopted by the United States government for the enforcement of the national insecticide act of 1910, and if it appears that any of the provisions of this act have been violated by such party, then the said director shall at once certify the facts to the proper district attorney, with a copy of the results of the analysis or the examination of such an article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as the said director may determine.

SEC. 4. That it shall be the duty of each district attorney to whom the said director shall report any violation of this act or present satisfactory evidences of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the State of California without delay, for the enforcement of the penalties as in such case herein provided.

SEC. 5. In any action, civil or criminal, in any court in this state, a certificate, under the hand of said director, and the seal of said university, stating the results of any analysis purporting to have been made under the provisions of this act, shall be prima facie evidence of the fact that the sample or samples mentioned in said analysis or certificate were properly analyzed, contained the component parts stated in such certificate and analysis; and that the samples were taken from the parcels or packages or lots mentioned or described in said certificate.

SEC. 6. That the term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term Paris green as used in this act shall include the product sold in commerce as Paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this act shall include the product or

products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. That the term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

SEC. 7. That for the purpose of this act an article shall be deemed to be adulterated—

In case of Paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of insecticides or fungicides, other than Paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used.

SEC. 8 (as amended). That the term "misbranded" as used herein shall apply to all insecticides, Paris green,¹ lead arsenate,² or fungicides or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances

¹ Instead of green, original act read greens.

² Instead of arsenate, original act read arsenates.

contained therein which shall be false or misleading in any particular, and to all insecticides, Paris green,³ lead arsenates,⁴ or fungicides which are falsely branded as to the state, territory, or country in which they are manufactured or produced. That for the purpose of this act an article shall be deemed to be misbranded. In the case of insecticides, Paris green,⁵ lead arsenate,⁶ and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure they are not plainly and correctly stated on the outside of the package.

In the case of insecticides (other than Paris green and lead arsenate) and fungicides; first, if it contains arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of any inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; *provided, however*, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names⁷ of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present.

SEC. 9 (as amended). That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party from whom he purchased such articles, to the effect that the same is not adulterated

³ Instead of green, original act read greens.

⁴ Instead of arsenate, original act read arsenates.

⁵ Instead of green, original act read greens.

⁶ Instead of arsenate, original act read arsenates.

The above are simply verbal changes.

⁷ Original act here added the words "and percentage amounts." This omission makes it possible for California manufacturers to omit the exact formula of the active ingredients as long as they do not enter into interstate trade and thus come under the United States law.

or misbranded within the meaning of this act, designating it;⁸ or a general guaranty may be filed with the secretary of the United States Department of Agriculture by the manufacturer, wholesaler, jobber or other party in the United States and be given a serial number, which number shall appear on every package of insecticide or fungicide sold under such guaranty with the words "guaranteed by" (the name of the guarantor) under the insecticide act of 1910; and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which shall attach in due course to the dealer under the provisions of this act.

SEC. 10. That the word "person" as used in this act shall be construed to mean both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent, or other person acting for or employed by any corporation, company, society or associations, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the other person.

SEC. 11 (as amended). Every lot, parcel, or package of commercial insecticides or fungicides or materials to be used for insecticidal⁹ or fungicidal¹⁰ purposes, sold, offered, or exposed for sale, within this state, shall be accompanied by a plainly printed label, stating the name, brand, and trade mark, if there be any, under which the insecticide or fungicide is sold, the name and address of the manufacturer, importer, or dealer, the place of manufacture and¹¹ giving a correct

⁸ Original act here added the words: "Said guaranty to afford protection shall contain the name and address of the party or parties making the sale of such articles to each dealer, and an itemized statement showing the articles purchased." This omission makes it possible for California manufacturers and jobbers to give a general guarantee to retailers within this State where a specific guarantee would be necessary in interstate trade.

⁹ Instead of insecticidal, original act read fungicidal.

¹⁰ Instead of fungicidal, original act read insecticidal.

These four amendments are purely formal and do not affect the operation of the law.

¹¹ Re-arrangement and changes, the original act reading from this point as follows: "A chemical analysis, stating the percentages claimed to be therein, of the substance or substances alleged to have insecticidal properties, specifying the form or forms in which each is present, and the materials from which all constituents of the insecticides are derived. All analyses of substances for which methods have been agreed upon by the American Association of Official Agricultural Chemists, are to be made by such official methods. In the case of those insecticides the selling price of which is less than one-half cent per pound, said label need only give a correct general statement of the nature and composition of the insecticide it accompanies." This amendment is a removal of the requirement of a chemical analysis, the same as note 7, but also removes the requirement of the use of official methods of analysis.

general statement of the nature and composition, together with the name of the insecticide it accompanies and the total percentage claimed to be therein, of the substance or substances alleged to have insecticidal or fungicidal properties.

SEC. 12 (as amended).¹⁴ No commercial insecticide, paris green, lead arsenate or fungicide shall be deemed to be adulterated under the provisions of this act, if the standard of strength, quality or purity thereof be plainly stated upon the bottle, box or container thereof, although the standard may differ from that determined by the provisions of section 7 hereof.

SEC. 12 $\frac{1}{2}$ (new section).¹³ The provisions of this act shall not apply to the sale of any of the preparations, drugs and chemicals of the United States Pharmacopoeia or National Formulary, which conforms to the standard and tests prescribed in the latest edition of the United States Pharmacopoeia or National Formulary, nor shall the provisions of this act apply to the sale of any medicinal or toilet preparations or substances guaranteed under the United States pure food and drugs act of June 30, 1906, and the California pure food and drugs act, in Statutes of California for 1907, chapter 187.

¹² Entirely rewritten, the original act reading as follows: "Sec. 12. The manufacturer, importer, agent of, or dealer in any commercial insecticide, or materials used for insecticidal purposes, the selling price of which to the consumer is not less than one-half cent ($\frac{1}{2}$ cent) per pound, shall, before same is offered for sale, obtain a certificate of registration from the secretary of the Board of Regents of the University of California, countersigned by the said university, authorizing the sale of insecticides in this state, and shall securely fix to each lot, parcel, or package of insecticide the word 'registered' with the number of registry. The manufacturer, importer, agent, or dealer obtaining such registry shall pay to the said secretary the sum of one (\$1.00) dollar, to be applied as provided in section 18 of this act; such registration shall expire on the thirtieth day of June of the fiscal year for which it was given; provided, the provisions of this section shall not apply to any agent whose principals shall have obtained a certificate of registration as herein provided. Every such manufacturer, importer, agent, or dealer, who makes or sells, or offers for sale, any such substances, under a name or brand, shall file, on or before the first day of July, in each year, a statement, under oath, with the director of the agricultural experiment station of the University of California, stating such name or brand, and stating the component parts, in accordance with the provisions of section 11 of this act, of the substances to be sold or offered for sale, or manufactured under each such name or brand." This amendment cancels the whole registration system and makes it possible to sell adulterated or low grade insecticides in this state provided only that they are plainly so labeled.

¹³ A new enactment. "Most of the preparations affected by this new section should really not be considered insecticides or fungicides, formaldehyde being almost the only exception. Medical or toilet preparations are often sold with a claim of virtue as disinfectants or germicides, any such claim is evidently fraudulent and will be prosecuted by this office unless the dealers come under the Pure Food and Drugs Act, when it will be the duty of the State Board of Health to look after them."

SEC. 13 (as amended). The directory¹⁴ of the agricultural experiment station of the University of California shall, upon the receipt of a sample of insecticide or fungicide,¹⁵ accompanied with a nominal fee of one dollar, furnish to the user of said commercial insecticide such examination or analysis of the sample as will substantially establish the conformity or non-conformity of the said insecticide or fungicide¹⁶ to the guarantee under which it is sold.

SEC. 14 (as amended). The directory,¹⁷ of the agricultural experiment station of the University of California, in person or by deputy, is hereby authorized to purchase¹⁸ a sample, not exceeding one pound¹⁹ in weight, for analysis by the said director or his deputies, from any lot, parcel or package of insecticide or fungicide, or material, or mixture of materials²⁰ used for insecticidal or fungicidal purposes, which may be in the possession of any manufacturer, importer, agent or dealer; but said sample shall be drawn in the presence of said party or parties in interest, or their representatives. In lots of five tons or less, samples shall be drawn from at least ten packages, or if less than ten packages are present, all shall be sampled; in lots of over five tons, not less than twenty packages shall be sampled. The

¹⁴ Instead of directory the original act read as follows: "Said director shall annually, on or before the first day of September, take samples in accordance with the provisions of section 14 hereof, of the substance made, sold, or offered for sale, under every such name or brand, and cause analyses to be made thereof in accordance with the provisions of section 11 hereof, and said analyses may include such other determinations as said director may at any time deem advisable. Dealers in or manufacturers of insecticides must give free access to the director of the agricultural experiment station, or his duly authorized deputy, to all the materials which they may place on the market for sale in California. Whenever the analysis certified by the said director shall show a deficiency of not more than five per cent of the substance alleged to have insecticidal properties, the statement of the manufacturer or importer, as required in section 11 of this act, shall not be deemed to be false in the meaning of this act; provided, that this act shall not apply to sales of insecticidal materials made to a registered manufacturer of insecticides or to sales for export outside of this state; provided further, that the said director

This amendment cancels the whole system of annual inspection. It removes the variation of 5% formerly permitted in the composition of insecticides, dealers will therefore be expected to conform hereafter strictly to their guarantee. It also removes the permission of the original law to sell to registered manufacturers or for export, goods not conforming to the law.

¹⁵ Original act omitted the words or fungicides.

¹⁶ Original act omitted the words or fungicides.

These are simply verbal changes.

¹⁷ Instead of directory, original act reads director. This is a verbal error both in this and the preceding section.

¹⁸ Instead of "purchase," original act reads "take." Removes the authorization to take samples for analysis without pay.

¹⁹ Instead of one pound, original act reads two pounds. Limits purchase for analysis to one pound.

²⁰ Original act omitted the words "of materials." This addition makes no material change in the law.

samples so drawn shall be thoroughly mixed, and from it two equal samples shall be drawn and placed in glass vessels, carefully sealed, and a label placed on each, stating the name or brand of the insecticide or material samples, the name of the party from whose stock the sample was drawn, and the time and place of drawing; and said label shall also be signed by the said director or his deputy making such inspection, and by the party or parties in interest or their representatives present at the drawing and sealing of said samples. One of said duplicate samples shall be retained by the party whose stock was sampled, and the other by the director of the agricultural experiment station of the University of California.

SEC. 14a²¹ (new section). The following insecticides and fungicides or materials to be used for insecticidal or fungicidal purposes may be sold by grocers and dealers generally without restriction and without the registration fee, permit or license being required of them, viz: Insect powders, poison fly paper, sticky fly paper, borax, moth balls, gum camphor, spirits of camphor, blue ointment, oil of eucalyptus, castor oil, ant poison, sheep dip, lice killer, sulphur, bluestone.

SEC. 15. The director of the agricultural experiment station of the University of California shall publish in bulletin form, from time to time, at least annually, the results of the analysis, hereinbefore provided, with such additional information as circumstances may advise.

SEC. 16. There is hereby provided for carrying out the purposes of this act, out of any moneys in the state treasury not otherwise appropriated, the sum of five thousand dollars for each fiscal year hereafter, beginning with the first day of July, 1911.

SEC. 17. All persons charged with the enforcement or execution of any of the provisions of this act shall not directly or indirectly be interested in the sale, manufacture or distribution of any insecticide or fungicide affected by this act.

SEC. 18 (as amended). All moneys²² received from²³ analytical fees shall be paid to the secretary of the board of regents of the University of California for the use of said board in carrying out the provisions of this act.

SEC. 19. An act to prevent fraud in the sale of Paris green used as an insecticide. Chap. LIII, p. 69, Statutes of 1901, is hereby repealed.

²¹ A new enactment apparently not applying to manufacturers or jobbers.

²² Original act inserted here the word "whether."

²³ Original act inserted here the words "registry and."

These two amendments are verbal changes to conform to Note 14.

SEC. 20. This act shall take effect and be in force from and after July first, 1911.

SUGGESTIONS TO DEALERS

While fees and annual registrations are no longer required, manufacturers and dealers must make sure that the preparations they handle conform in every way to the law.

1st. That they be not "adulterated" in the manner specified in Section 7, or if not conforming to these requirements and sold under the provision of section 12, the label must show plainly wherein it differs in order to secure this exemption.

2nd. That they be not "misbranded" in the manner specified in Section 8. The law requires that every package sold shall have a printed label (section 11); that this label shall state:

1. Name, brand and trade mark if there be any.
2. Name and address of manufacturer, importer or dealer.
3. Place of manufacture.
4. Correct general statement of the nature and composition (Sec. 11).
5. Total per cent of active ingredients.
6. Total per cent of inert ingredients.
7. Name of each active ingredient or name of each inert ingredient.
8. If weight is given it must be correct.
9. If arsenic is present total and water soluble arsenic must be stated (as As_2O_3 if Paris Green, As_2O_5 if Lead Arsenate, metallic arsenic for other substances.
10. Nothing false or misleading.

The Laboratory would appreciate the courtesy if manufacturers would keep us informed regarding the materials they are offering for sale by a voluntary registration. No special form need be used and no fees paid. Simply send a set of labels. We would also appreciate the sending of samples for examination.

Where this is done it will not be considered incorrect to continue the use of the word "registered" and the registry number on the label.

Analyses of insecticides and fungicides will not be made for manufacturers or dealers. Users of insecticides may obtain an analysis upon the payment of a nominal fee of \$1.00. Circular No. 105 giving directions for taking samples will be sent on application.